
In the Matter of:	:	
	:	
Angela Dyches,	:	HUDBCA No. 03-A-NY-AWG34
	:	Claim No. 780441405
	:	
Petitioner	:	

Angela Dyches
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West Columbia, SC 24172

Pro se

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For the Secretary

DECISION ON ADMINISTRATIVE WAGE GARNISHMENT

Petitioner requested a hearing concerning a proposed administrative wage garnishment relating to a debt allegedly owed to the U.S. Department of Housing Urban Development (“HUD”). This alleged debt resulted from a defaulted loan, which was insured against non-payment by the Secretary of HUD. The Debt Collection Improvement Act of 1996, as amended (31 U.S.C. § 3702D), authorized Federal agencies to utilize administrative wage garnishment as a remedy as for the collection of debts owed to the United States Government.

The administrative judges of this Board have been designated to determine whether this debt is past due and enforceable against Petitioner and, if so, whether the Secretary may collect the alleged debt by administrative wage garnishment. 24 C.F.R. § 17.170(b). This hearing was conducted in accordance with the procedures set forth at 31 C.F.R. § 285.11, as authorized by 24 C.F.R. § 17.170. The Secretary has the initial burden of proof to show the existence and amount of the debt. 31 C.F.R. §

285.11(f)(8)(i). Petitioner thereafter must present by a preponderance of the evidence that no debt exists or that the amount of the debt is incorrect. In addition, Petitioner may present evidence that the terms of the repayment schedule are unlawful, would cause a financial hardship to Petitioner, or that collection of the debt may not be pursued due to operation law. 31 C.F.R. § 285.11(f)(8)(ii). Pursuant to 31 C.F.R. § 285.11(f)(10)(i), issuance of a wage withholding order was stayed until the issuance of this written decision.

Summary of Facts and Discussion

On July 30, 1996, Petitioner and George B. Dyches—his relationship to Petitioner is not reflected in the record—executed and delivered to Vanderbilt Mortgage and Finance, Inc. (hereinafter “Vanderbilt”) an installment note for \$54,147.20 for a mobile home that was insured against nonpayment by the Secretary pursuant to Title I of the National Housing Act, 12 U.S.C. § 1703. (Secretary’s Statement, hereinafter, “Secy. Stat.” Exh. A). Petitioner then defaulted on the note, and on November 14, 2001, Vanderbilt assigned the note to the United States of America pursuant to 24 C.F.R. § 201.54. (Secy. Stat., Exh. B). The debt was referred to the Treasury Offset Program (hereinafter, “TOP”) on November 25, 2002, and TOP payments of \$1,058.00 on February 28, 2003 and \$400.09 on August 1, 2003 were posted to the account. (Secy. Stat., Exh. C, Declaration of Brian Dillon, hereinafter “Dillon Decl.” at ¶ 7). Petitioner is indebted to the United States in the following amounts: \$13,120.51 as the unpaid principal balance as of August 30, 2003; \$597.07 as the unpaid interest on the principal balance at 5% per annum through August 30, 2003; and interest on said principal balance from August 31, 2003 at 5% per annum until paid. (Secy. Stat., Exh. C, Dillon Decl. at ¶ 4).

The Board in its Order dated November 24, 2003 directed the Secretary to file a proposed repayment schedule. The Secretary filed a response on December 3, 2003 with a copy of Petitioner’s pay stub for the pay period ending October 17, 2003 attached. (Secretary’s Response to Order, hereinafter “Secy Resp.”). The Petitioner’s gross earnings were \$1,751.54 for 80 hours, and, after subtracting allowable deductions that totaled \$455.15, her disposable earnings were \$1,296.39. (Secy Resp., Exh. B). The Secretary proposed garnishment at a rate of 15% of her disposable earnings in the amount of \$194.46 bi-weekly. (Secy Resp.).

Petitioner, in her request for a hearing, questioned whether her debt had been reduced by earlier Federal payments due to her that should have been credited against the outstanding balance due on this debt. She also asserted that she was “not the primary debtor,” described herself as a “single mother with little assistance,” and, indicated that she wanted to “know the minimum required payment to avoid [administrative wage garnishment].” Petitioner has failed to submit—as she was entitled pursuant to 31 C.F.R. § 285.11(f)(8)(ii)—any evidence to this Board to prove that the debt is not past-due or enforceable nor any evidence to prove that the Secretary’s proposed repayment schedule is unlawful, would cause financial hardship, or that collection of the debt may not be pursued due to operation of law. Petitioner has not responded to the Board’s Notice of Docketing, Stay, and Referral dated September 4, 2003, its Order dated December 8,

2003 to submit evidence in response to the Secretary's proposed repayment schedule, and the Board's Order to Show Cause dated January 6, 2004.

The Secretary has met his burden of proof as to the amount of debt. Petitioner noted in her hearing request that "approx[imately] \$1,500.00" had been collected but the amount of the debt had not changed." The Secretary's Statement explained in detail the TOP payments applied to Petitioner's account, and provided a case reconstruction report that showed the reduction of Petitioner's debt for the two payments that totaled \$1,458.00. (Secy. Stat., Exh. C, Dillon Decl. at ¶ 7). Petitioner has submitted no documentary evidence to rebut the Secretary's proof, and the Board finds that the Petitioner's debt is that amount reflected in the Secretary's Statement.

Petitioner errs in arguing that she is not the "primary debtor." Both Petitioner and George B. Dyches signed the retail installment contract. Generally, cosigners for a loan are jointly and severally liable to the obligation. Thelma Smith, HUDBCA No. 00-A-NY-AAB at 2 (June 19, 2000). "Liability is characterized as joint and several when a creditor may sue the parties to an obligation separately or together." Mary Jane Lyons Hardy, HUDBCA No. 87-1982-G314 at 3 (July 15, 1987). Petitioner has submitted no evidence or persuasive argument that the lender ever released her from the debt. The debt, therefore, is enforceable against Petitioner individually.

Petitioner has asserted that she is a "single mother with little assistance." However, Petitioner has failed submit, as ordered, any documentary evidence upon which this Board could determine that garnishment of Petitioner's wages to assure repayment of this obligation would cause financial hardship. Assertions without supporting evidence are not sufficient to show that the debt claimed by the Secretary is not past-due or enforceable. Bonnie Walker, HUDBCA No. 95-G-NY-T300. (July 3, 1996).

Petitioner has expressed a desire to avoid administrative wage garnishment. Petitioner may wish to negotiate repayment terms with the Department, but this Board is not authorized to extend, recommend, or accept any payment plan or settlement offer on behalf of the Department. Petitioner may want to discuss this matter with Counsel for the Secretary or Lester J. West, Director, HUD Albany Financial Operations Center, 52 Corporate Circle, Albany, NY 12203-5121. His telephone number is 1-800-669-5152, extension 4206. Petitioner may also request a review of her financial status by submitting to the HUD Office a Title I Financial Statement (HUD Form 56142). In any event, Petitioner has provided no legal or credible factual basis on which this Board can find that she is not liable for repayment of the outstanding balance due on this loan.

ORDER

For the reasons set forth above, I find that the debt, which is the subject of this proceeding, is legally enforceable against Petitioner in the amount claimed by the

Secretary. The Order imposing the stay of referral of this matter to the U.S. Department of Treasury for administrative wage garnishment is vacated.

It is hereby ORDERED that the Secretary is authorized to seek collection of this outstanding obligation by means of administrative wage garnishment to the extent authorized by law.

H. Chuck Kullberg
Administrative Judge

February 12, 2004